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December 19, 2005

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
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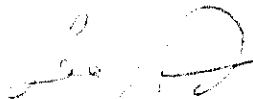
Federal Communications Commission
Office of Secretary

**Re: MB Docket No. 05-143
RM-11221, 11286
Motion to Strike Comments on Counterproposal
(Romney and Wardensville, West Virginia)**

Dear Ms. Dortch:

Transmitted herewith, on behalf of Hardy County Broadcast Associates, is an original and four (4) copies of its Motion to Strike Comments on Counterproposal. Please contact undersigned counsel in the event the Commission has any questions with respect to this filing.

Sincerely,



Lee J. Peltzman
Counsel for
HARDY COUNTY BROADCAST ASSOCIATES

LJP/kdm

Enclosure

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
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In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 05-143
Table of Allotments)	RM-11221, 11286
FM Broadcast Stations)	
(Romney and Wardensville, West Virginia))	

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

MOTION TO STRIKE COMMENTS ON COUNTERPROPOSAL

Hardy County Broadcast Associates ("HCBA"), by its counsel, moves to strike the Comments on Counterproposal, filed November 30, 2005 by Cornwell & Ailes, Inc. ("C & A").

In support of its position, HCBA submits the following:

On October 20, 2005, the Commission released a *Public Notice*, Report No. 2734, which accepted the Counterproposal filed by HCBA in the above-captioned rulemaking proceeding. The *Public Notice* stated that Comments regarding the HCBA Counterproposal would be due within fifteen (15) days of the October 20, 2005 release date. *See* Exhibit 1. HCBA filed timely Reply Comments on November 4, 2005. Cornwell & Ailes, Inc. filed late-filed "Comments on Counterproposal" and a "Motion to Accept Late-Filed Comments" almost one month later on November 30, 2005.

C & A's late-filed Comments should be stricken as violative of the Commission's rules. C & A attempts to justify its late filing by claiming that it reviewed the Commission's releases to see if the HCBA counterproposal had been accepted but that it was unaware that the Commission

Public Notice would be released by its Consumer and Governmental Affairs Bureau rather than by the Media Bureau. This excuse borders on the preposterous. The Commission has for years released Public Notices accepting counterproposals in allotment rulemakings in the manner it did in this case. Hundreds if not thousands of rulemaking proponents and opponents have managed to file Reply Comments with respect to the counterproposals listed on such Public Notices without encountering problems. C & A merely failed to use reasonable diligence in noting the release of the Commission *Public Notice*. If C & A encountered a problem in filing, it was of its own making and it has not provided a sufficient reason justifying why its untimely Comments should be accepted.

Section 1.415 of the Commission's rules provides that Comments in rulemaking proceedings may not be filed after the deadline specified in a Commission Notice and Section 1.46 of the rules states that such a deadline may be extended only upon a showing that an emergency situation prevented the filing of timely Comments. *See Columbia and Edenton, North Carolina*, DA 05-2051 (MB, released July 22, 2005). C & A has not come close to showing sufficient justification to allow acceptance of its late filed Comments. Accordingly, consistent with its action in literally scores of similar cases, the Commission should dismiss the C & A late-filed Comments. *See Cherry Valley and Cotton Plant, Arkansas*, 14 FCC Rcd 13544 n.6 (MMB 1999) (late-filed Reply Comments not considered); *Sulphur and South Fort Polk, Louisiana, Bay City, Edna, Galveston, Jasper, La Granger, New Ulm, Palacios, Redland, Rosenberg and Winnie, Texas*, 10 FCC 4952 n.4 (MMB 1995) (late-filed Reply Comments not considered absent sufficient justification for their tardiness); *Berlin, De Forest, Markesan and Wautoma, Wisconsin*, 10 FCC Rcd 733 n.3 (MMB 1995) (late-filed Reply Comments were unauthorized and not accepted); *Billings and Lewistown, Montana*, 6 FCC Rcd 3632 n.1 (MMB

1991); *Chippewa Falls, Wisconsin and Red Wing, Minnesota*, 3 FCC Rcd 5553 n.4 (MMB 1988); *Brenham, Round Rock, Austin, Caldwell, Belton, Killeen, Brownwood, West Lake Hills and Temple, Texas*, 3 FCC Rcd 2495 n.4 (MMB 1988); *Liberty and Jasper, Texas*, 2 FCC Rcd 6797 n.6 (MMB 1987).

Moreover, contrary to C & A's claim offered in justification for its late-filing that its Comments provide "factual material relevant to the Commission's determination of which proposal better meets the public interest,"¹ C & A's Comments instead offer legal argument that manifestly misses the mark. Thus, for example, C & A claims that Wardensville, West Virginia, the community contained in HCBA's counterproposal, is a "quiet village" and is not qualified for a local service as compared to the C & A proposal at Romney, West Virginia. The "quiet village" doctrine states that, under certain circumstances, an otherwise decisive 307(b) preference will not be given to an exceedingly small community proposing local service *in a comparative proceeding*.

C & A argues that the Commission should apply the quiet village standard used in comparative hearing cases² to this allotment proceeding. However, there are several reasons why the Commission should refrain from accepting C & A's offer. First, C & A cites no allotment rulemaking decision in which the Commission denied the proposal of an otherwise licensable community because it was a so-called "quiet village." Moreover, the basis of the "quiet village" doctrine has been that the signals of each station in competing communities would cover virtually the same area and population and there was a greater public interest need in providing for a *first* competitive aural service in a large community than providing a first local

¹ Motion to Accept Late Filed Comments, filed by Cornwell & Ailes, Inc., November 30, 2005.

² C & A cites two comparative hearing cases; *Santee Cooper Broadcasting Co.*, 57 RR 2d 662 (Rev. Bd. 1984) and *Beacon Broadcasting*, 2 FCC Rcd 3469 (1987).

service in an extremely small community.³ However, at present, Romney has two broadcast stations: WDNZ(FM) and WWSB(FM). Therefore, unlike those comparative hearing cases in which the “quiet village” doctrine was applied, C & A here does not propose a first competitive aural service. *See Nelson Enterprises, Inc.*, 19 FCC Rcd 13350 (2004). Moreover, while Romney and Wardensville are located in the same vicinity, a Romney station would not serve the same area and population as would a Wardensville station. In fact, C & A attempts to make this population and area disparity the basis for awarding itself a comparative preference. Since the proposed stations’ coverages would not serve the same areas and populations, this provides yet another distinction between this case and the “quiet village” comparative hearing decisions. *See Bloomington and Nashville, Indiana*, 4 FCC Rcd 5765 (M. M. Bur. 1989).⁴

Further, Wardensville, although small in population, could hardly be characterized as a “quiet village.” Certainly, C & A has not rebutted the presumption that Wardensville is entitled to a first local preference. The “quiet village” doctrine has no applicability where service is proposed for a separate and distinct community, like Wardensville, with palpable political, economic, social and other needs. Wardensville is self-governing, with a mayor and town counsel, and provides its residents with municipal services, including fire, volunteer rescue and parks. Additionally, contrary to C & A’s contention, there are scores of businesses in Wardensville.⁵ *See Pontotoc, Winona, Coffeerville and Rienzi, Mississippi and Bolivar, Middleton, Selmer and Ramer, Tennessee*, 11 FCC Rcd 14430 (M. M. Bur. 1996); *Bartow, Chauncey, Dublin, Eastman, Jeffersonville, Lyons, Soperton and Unadilla, Georgia*, 4 FCC Rcd

³ *Debra D. Carigan*, 100 FCC 2d 721, 731-32 (1985).

⁴ C & A specified reference coordinates for its Romney allotment of N. Latitude 39-20-31; W. Longitude 78-45-24. HCBA specified reference coordinates for its Wardensville allotment at N. Latitude 39-04-30; W. Longitude 78-35-53. The two allotment sites are 33 kilometers apart. *See Exhibit 2*. In the *Bloomington and Nashville* case, where the Commission refused to apply the “quiet village” doctrine, the two reference sites were only 25 kilometers apart.


⁵ *See HCBA’s Counterproposal*, filed May 10, 2005. *See also Exhibit 3*.

6876 (M. M. Bur. 1989) (channel allotted over “quiet village” objections to a self-governing community of 350 persons); *Bloomington and Nashville, Indiana, supra*.

In view of the above, the Commission must strike the C & A Comments on Counterproposal. They are procedurally deficient and, moreover, are substantively lacking in merit.⁶

Respectfully submitted,

HARDY COUNTY BROADCAST ASSOCIATES

By: 

Lee J. Peltzman
Its Attorney
Shainis & Peltzman, Chartered
1850 M Street
Suite 240
Washington, DC 20036

Date: December 19, 2005

⁶ C & A contends that it should prevail because, accepting its reference to Wardensville as a “quiet village”, C & A would provide service to a greater number of individuals in its proposed service area. Not only do C & A’s assertions demonstrate one of the reasons why the “quiet village” doctrine is inapplicable here, but its attempt to use actual terrain conditions to predict signal coverage in this allotment proceeding is simply incorrect. C & A’s proposal is unacceptable since it violates the Commission policy of assuming uniform terrain in allotment proceedings. See *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988); *Dos Palos, Chualar and Big Sur, California*, 19 FCC Rcd 1826 (M. Bur. 2004).

EXHIBIT 1



PUBLIC NOTICE

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445 12th St., S.W.
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Report No. 2734

October 20, 2005

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU
REFERENCE INFORMATION CENTER
PETITION FOR RULEMAKINGS FILED

Interested persons may file statements opposing or supporting the Petition for Rulemakings listed herein within 30 days, or as noted. See Sections 1.4 and 1.405 of the Commission's rules for further information.

RM NO.	RULES SEC.	PETITIONER	DATE RECEIVED	NATURE OF PETITION
11286*	73.202(b)	Hardy County Broadcast Associates (Filed By: Lee J. Peltzman Shainis & Peltzman, Chartered 1850 M Street Suite 240 Washington, DC 20036)	5/10/2005	The counterproposal seeks the allotment of Channel 239A at Wardenville, West Virginia, rather than the allotment of Channel 239A at Romney, West Virginia, as proposed in the notice of proposed rule making in this proceeding. The proposed reference coordinates for Channel 239A at Wardenville, West

Virginia, are 39-04-30 NL and 78-35-53 WL, at the city reference coordinates.

*THE ABOVE PROPOSAL WILL BE TREATED AS A COUNTERPROPOSAL IN MB DOCKET NO. 05-143. REPLY COMMENTS TO THE COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS

EXHIBIT 2



Audio Division

(202)-418-2700

FCC > MB > Audio Division > Distance Computations and Find Terminal Coordinates

Distance, Bearing Between Two Sets of Coordinates

Find Distance and Azimuths Between 2 Sets of Coordinates -- Results

Distance between

N Latitude 39 20 31.00, W Longitude 78 45 24.00 (Point 1)

and N Latitude 39 4 30.00, W Longitude 78 35 53.00 (Point 2)

32.673 kilometers; 20.302 miles

Azimuth from point 1 to point 2 = 155.23°

Azimuth from point 2 to point 1 = 335.33°

[Another Distance Computation?](#)

Use Sprong to find the terminal or end coordinates, given a bearing and a distance **Results**

This program is located at <http://www.fcc.gov/fcc-bin/audio/distance.html>

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Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

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445 12th Street SW
Washington, DC 20554
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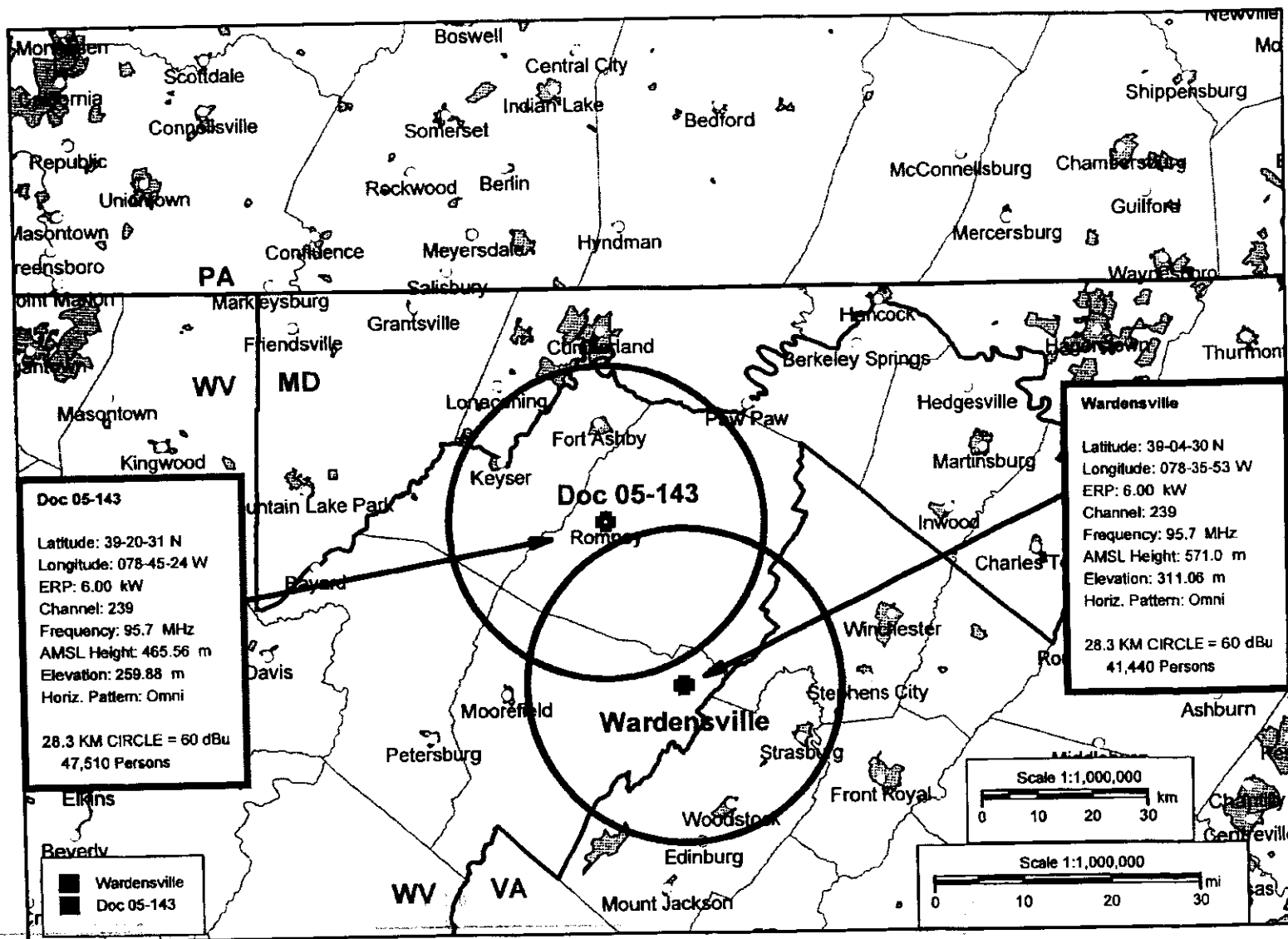


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Business Name:

Address:

Hahn, Jerry M MD - Wardensville Medical Svc
(304) 874-4012

325 E Main St
Wardensville, WV Map

Hahn, John L MD - Wardensville Medical Svc
(304) 874-4012

325 E Main St
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Hahn, Nancy - Wardensville Medical Svc
(304) 874-4012

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Town Of Wardensville Mayors
(304) 874-3950

25 Warrior Way
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Wardensville Fire Dept
(304) 874-3733

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Wardensville Methodist Church
(304) 874-3785

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Wardensville Pharmacy
(304) 874-3687

333 E Main St
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Wardensville Town Office
(304) 874-3951

25 Warrior Way
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(304) 874-3719

165 E Main St
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Capon Valley Used Cars Inc

Address: 28853 State Road 55, Wardensville, WV 26851
Phone: (304) 874-3764

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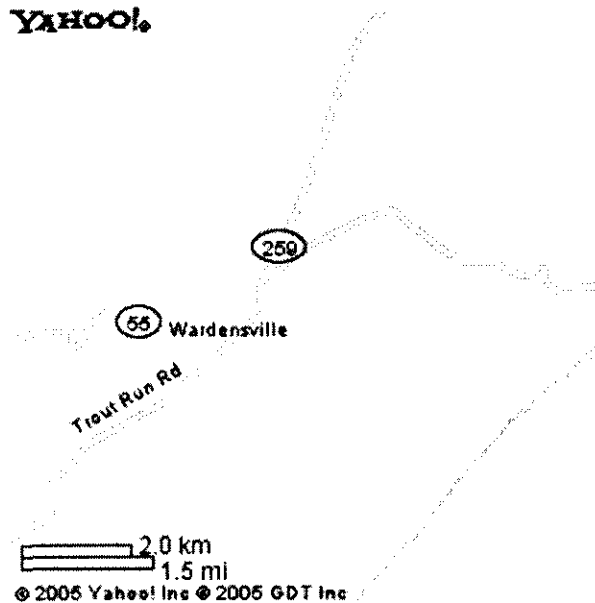
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Hahn's Used Cars

Address: 955 Trout Run Rd, Wardensville, WV 26851
Phone: (304) 874-3461

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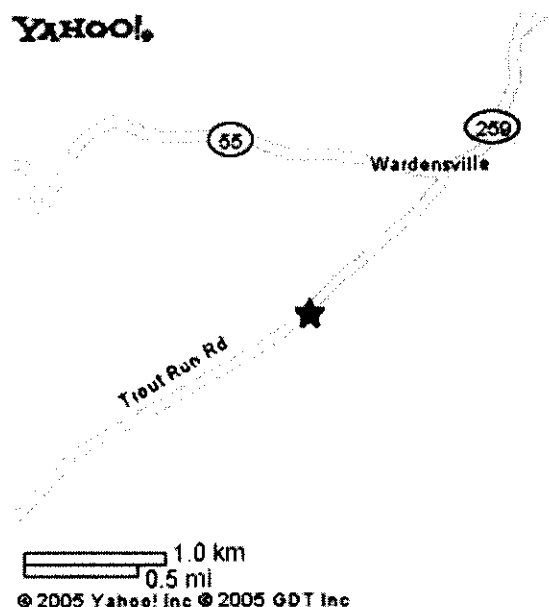
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C J Preowned Vehicles

Address: 27254 State Road 55, Wardensville, WV 26851
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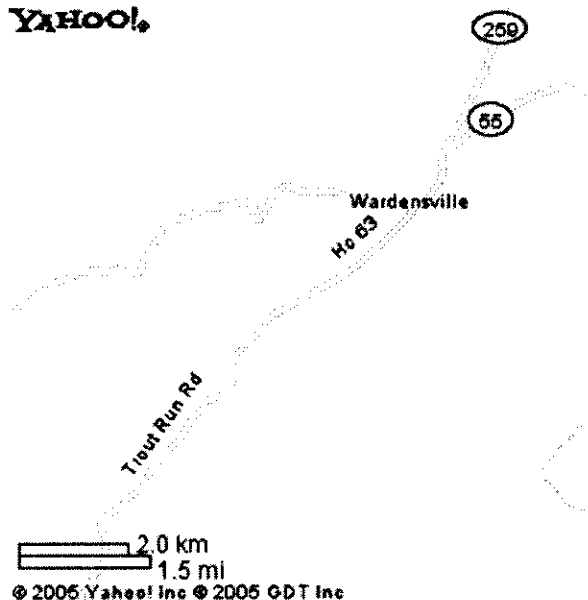
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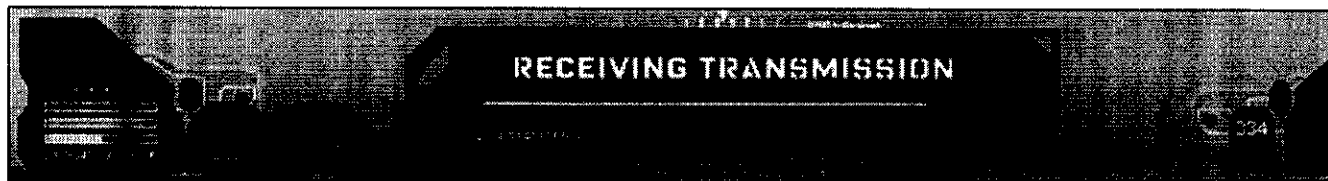
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Fox's Pizza

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Phone: (304) 874-4201

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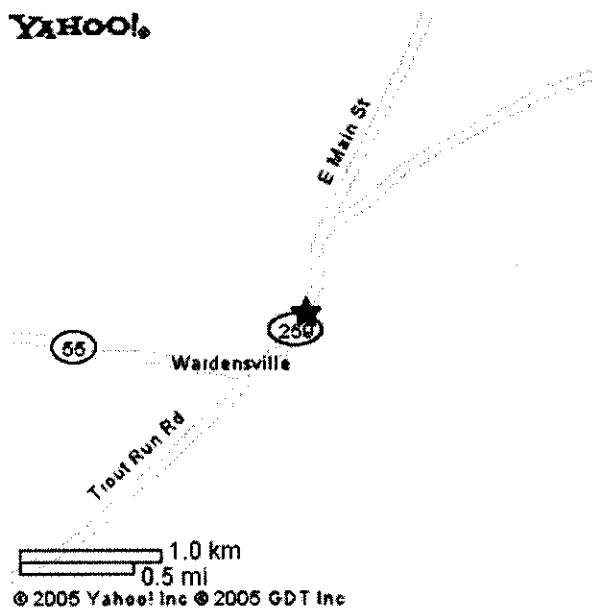
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Freeze King

Address: 225 E Main St, Wardensville, WV 26851

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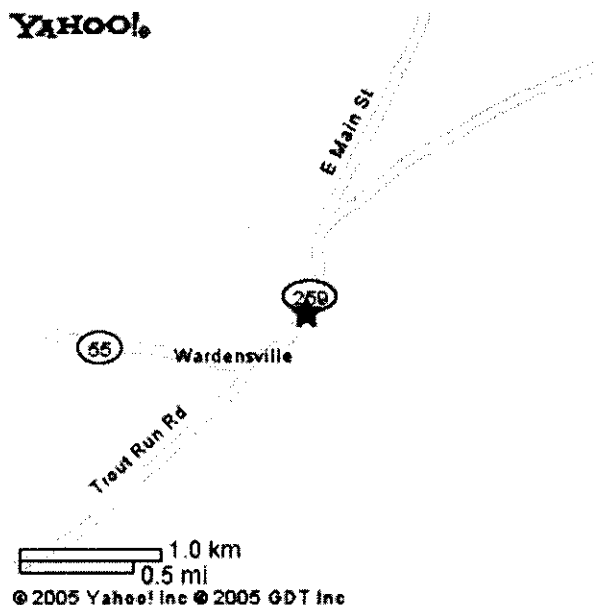
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Kac Ka Pon Restaurant

Address: 395 E Main St, Wardensville, WV 26851

Phone: (304) 874-3232

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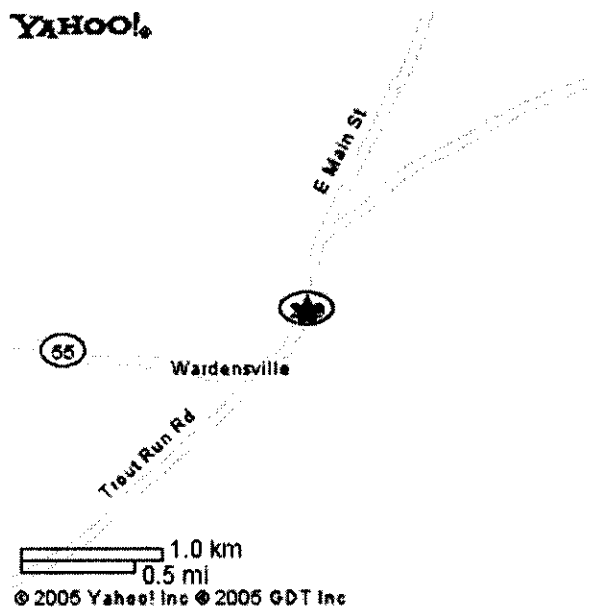
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Mountaineer Restaurant

Address: 227 S Main St, Wardensville, WV 26851

Phone: (304) 874-3838

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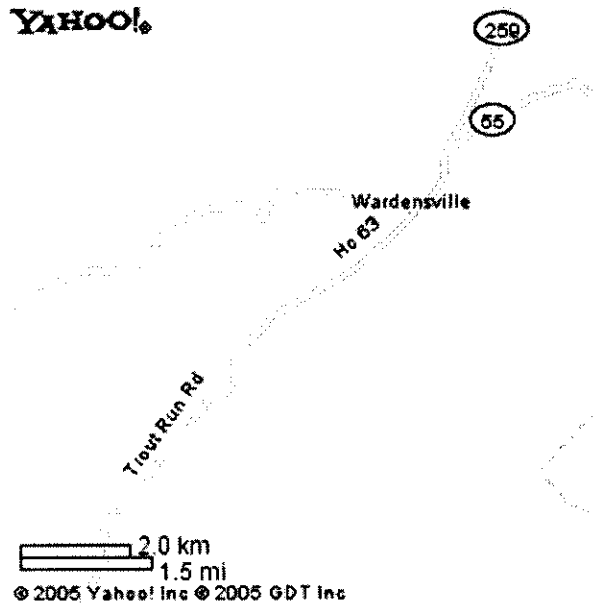
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227 S Main St, Wardensville, WV 26851

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Location: ★ Ward

[Top](#) > [Food and Dining](#) > [Restaurants](#) > [All Restaurants](#)

White Star Restaurant

Address: Main St, Wardensville, WV 26851
Phone: (304) 874-3663

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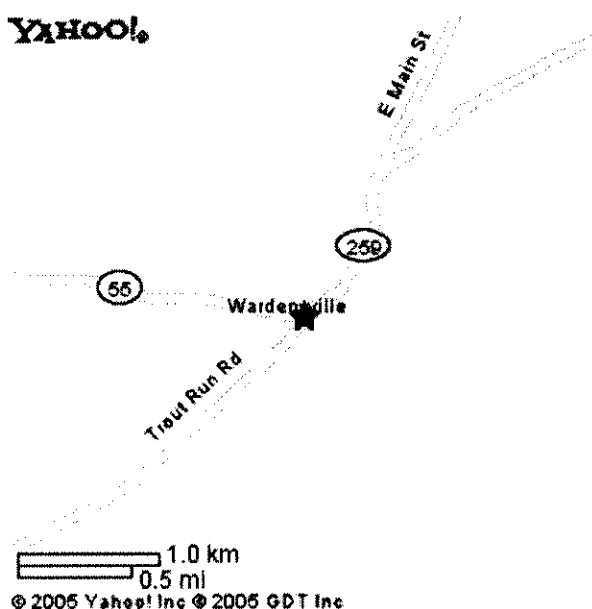
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Location: ★ Ward

Top > Retail Shopping > Shopping Venues > Department Stores

Dollar General

Address: 417 E Main, Wardensville, WV 26851

Phone: (304) 874-4264

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Related Categories

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- [Retailers > Department Stores](#)

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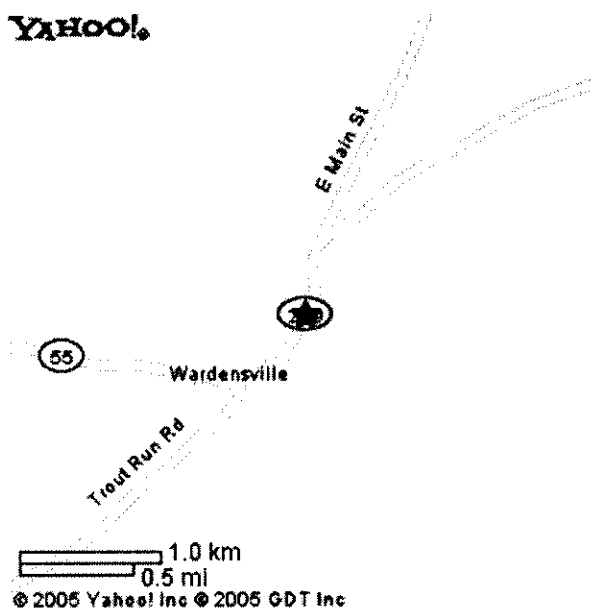
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Search by Category or Business Name (e.g. Hotel or Holiday Inn)

Location: ★ Wardensville

Top > Travel and Transportation > Hotels and Lodging > Hotels and Motels

See's Motel

Address: 30 W Main St, Wardensville, WV 26851
Phone: (304) 874-3666

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This listing appears in:

- Hotels and Lodging > Hotels and Motels
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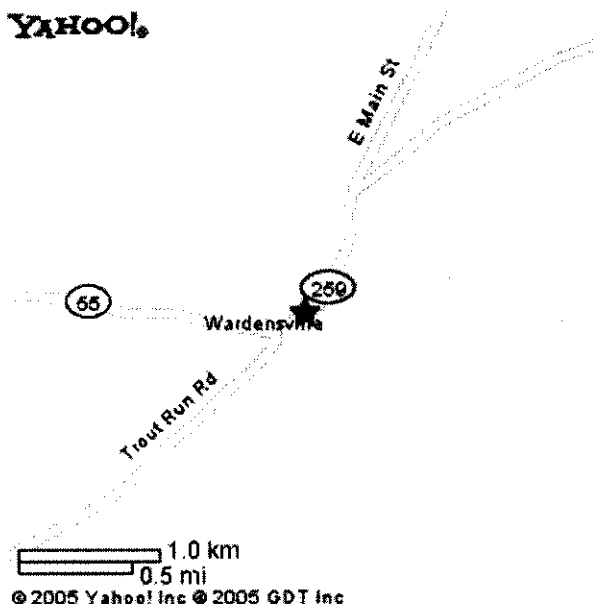
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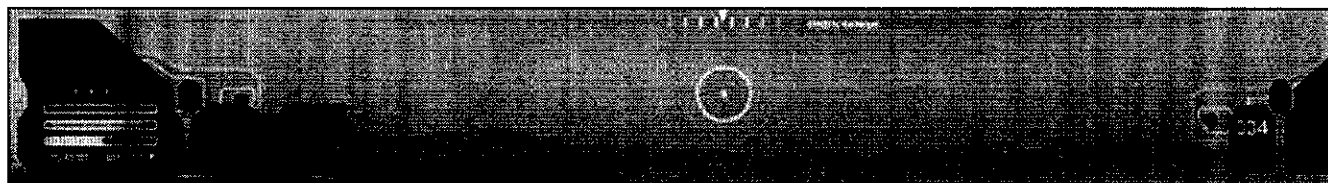
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Location: ★ Wardensville

Top > Legal and Financial > Banks

Capon Valley Bank

Address: 2 W Main St, Wardensville, WV 26851

Phone: (304) 874-3531

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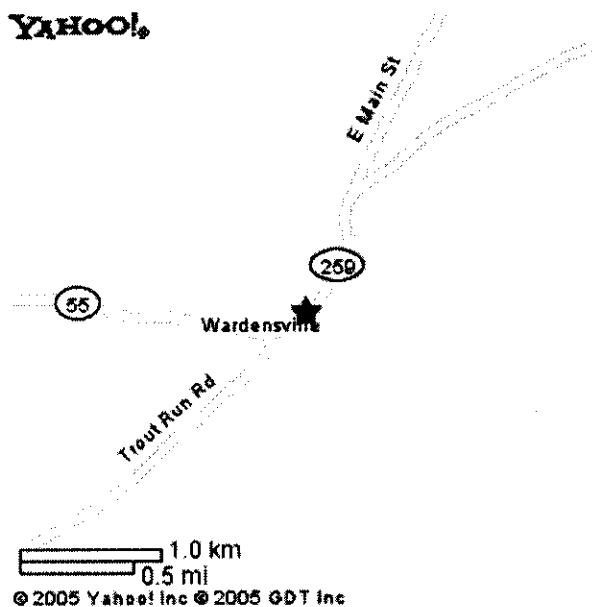
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